APPEAL NO. 93468

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1993). On May 12, 1993, a contested case hearing was held in (city), Texas, with (hearing officer)t presiding. He determined that appellant (claimant) was not injured in the course and scope of employment and did not have disability. Appellant (claimant) corresponded voluminously indicating that he disagreed with the decision. Respondent (city) replied that the decision should be upheld.

DECISION

We affirm.

The issues at the hearing concerned injury and disability. Article 8308-6.42(c) of the 1989 Act states that the Appeals Panel "shall determine each issue on which review was requested." The claimant disputes the findings of fact that were unfavorable to him.

The Appeals Panel determines:

That findings of fact that describe when claimant did not report his injury are sufficiently supported by the evidence.

That findings of fact that describe when a trampoline was set up in a civic center are sufficiently supported by the evidence.

That a finding of fact that Pedro Guerra (PG) did not assist claimant with the trampoline is sufficiently supported by the evidence.

That a finding of fact that claimant did not injure himself on or about (date of injury), while working with a trampoline is sufficiently supported by the evidence.

That a finding of fact that claimant did not lose time from work because of an injury on (date of injury), with a trampoline is sufficiently supported by the evidence.

Claimant worked as a janitor for the city. He had worked for the city for several years. Claimant resigned his job on July 24, 1992, after a realignment of work schedules. July 24th was a Friday; on Monday, July 27th, claimant inquired about returning to his job; he was denied reinstatement. On July 31, 1992, claimant reported that he injured his back, said to have been on (date of injury) when he and PG were working with the trampoline. Evidence indicated that PG did not work on July 21, 1992, and claimant asserted that the injury occurred on (date of injury), not July 21, 1992.

PG testified that he did not set up a trampoline with the claimant and claimant did not tell him that he injured himself. The city provided the testimony of several city employees,

some of whom were in supervisory roles to claimant, who indicated familiarity with the trampoline, and stated that the trampoline was used in the late afternoon on Tuesday--(date of injury) was a Tuesday. For safety and space reasons the trampoline was not set up on Monday (it was not used on Monday) or even early in the day on Tuesday. Witnesses who so testified included (AR), (LS), and (PB). No one other than claimant indicated that the trampoline could be set up on Monday--(date of injury), was a Monday. None of these witnesses, other than claimant, indicated that claimant said anything about an injury while he was working, talking to them, or quitting the job, until he gave notice of an injury on July 31, 1992.

Claimant called (CC) who indicated that she knew the claimant and that he told her of his injury on (date of injury), indicating that it happened that day. She massaged him because she worked at a hospital as a nurse's assistant. She also testified that she knows claimant was not hurt before that date and that he always tells the truth.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. He also judges conflicts in the evidence, such as that between the claimant and PG who said he did not help claimant move the trampoline; the hearing officer may resolve such a conflict by believing PG, not the claimant. *See* Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). Similarly, the hearing officer could believe the testimony of three witnesses who said that the trampoline could not have been moved on a Monday, the day injury was alleged. No evidence indicated that claimant lost any time from work because of the alleged injury. All the disputed issues were fact issues which are the province of the hearing officer as finder of fact to address. The Appeals Panel will not reverse his decision as to fact findings unless a finding is against the great weight and preponderance of the evidence. None of the findings of fact are against the great weight and preponderance of the evidence.

The conclusions of law set forth by the hearing officer follow in logical progression the findings of fact and the evidence of record; those conclusions are sufficiently supported by the evidence.

The claimant asserts in his correspondence regarding the appellate process that documents relating to programs at the civic center on (date of injury), recording of interviews, and work schedules may not have been used at the hearing; he included some favorable letters referring to his character. Claimant does not indicate, and the Appeals Panel does not find, that any document came to his attention since the hearing, that it was not through lack of diligence that he did not have it sooner, that it is not cumulative, and that it is so material that it would probably produce a different result in the decision. *See* Black v. Willis, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The evidence admitted at the hearing was considered in reviewing this case, but no evidence attached to the correspondence in the appeal process was considered.

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge